

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

BRANDON NICHOLAS BARNETT,

Plaintiff,

v.

NINA HILL, et al.,

Defendants.

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No. 1:18-CV-238 AGF

MEMORANDUM AND ORDER

This matter is before the Court for review pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. Review of the record indicates that defendant “Dr. Unknown Winklemeyer” has not been served with process.

Plaintiff, an inmate at the Southwest Correctional Center (“SECC”), commenced this action in this Court on October 9, 2018, naming a “Dr. Winklemeyer” as a defendant in his complaint. However, the docket sheet in this matter and the Court’s order issued on January 31, 2019, directed the Clerk to serve process on the complaint as to 3 defendants including a “Dr. Winklemeyer.” The Clerk attempted to serve process upon “Winklemeyer” via Corizon, LLC, as plaintiff identified him as a medical specialist employed by SECC. However, counsel for Corizon, LLC declined to waive service stating: “they cannot waive service on behalf of Defendant Winklemeyer. Corizon has no record of an employee named Winklemeyer.” ECF No. 23.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 90 days after the complaint is filed, the court -- on motion or on its own after notice to the plaintiff -- must dismiss the action without prejudice against that defendant or order that service be made within a

specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

In the case at bar, it has been more than 90 days since plaintiff filed his complaint naming Winklemyer as a defendant. As noted above, Rule 4(m) of the Federal Rules of Civil Procedure provides that the Court, after notice to a plaintiff, shall dismiss an action against any defendant upon whom service has not been timely made.


In light of plaintiff's status as a *pro se* and *in forma pauperis* litigant, and the confusion as to the spelling of Dr. Winklemyer's name, the Court will order that counsel for Corizon file another notice with the Court within 14 days as to whether Corizon has a record of an employee doctor spelled "Winklemyer."

Accordingly,

IT IS HEREBY ORDERED that, no later than 14 days from the date of this Order, counsel for Corizon shall file a notice with this Court as to whether Corizon has record of an employee doctor named "Winklemyer" for whom they could waive service of process.

IT IS FURTHER ORDERED that the Clerk of Court is directed to change the spelling on the docket sheet to "Dr. Unknown Winklemyer."

Dated this 16th day of April, 2019.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE